

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Anthony McClendon El,

Plaintiff,

Case No. 23-10739

v.

Judith E. Levy
United States District Judge

Heidi Washington, *et al.*,

Mag. Judge Curtis Ivy, Jr.

Defendants.

_____/

**OPINION AND ORDER DENYING WITHOUT PREJUDICE
PLAINTIFF'S MOTION TO PROCEED WITHOUT PREPAYING
FEES OR COSTS ON APPEAL [45]**

Before the Court is Plaintiff's motion to proceed without prepaying fees or costs on appeal. (ECF No. 45.) On March 30, 2023, Plaintiff filed his civil rights complaint and paid the filing fee of \$402.00. (ECF No. 1.) On September 25, 2024, the Court issued an opinion and order granting Defendants' amended motion to dismiss. (ECF Nos. 41, 42.) Plaintiff filed a notice of appeal of that order on October 1, 2024 (ECF No. 43), and filed the motion to proceed without prepaying fees or costs on appeal on October 17, 2024. (ECF No. 45.)

Plaintiff's application is governed by 28 U.S.C. § 1915 and Federal Rule of Appellate Procedure 24. Pursuant to Federal Rule of Appellate Procedure 24, a party who wishes to appeal *in forma pauperis* must file a motion in district court and an affidavit that "shows in the detail prescribed by Form 4 of the Appendix of Forms the party's inability to pay or to give security for fees and costs," "claims an entitlement to redress," and "states the issues that the party intends to present on appeal." Fed. R. App. P. 24(a)(1)(A)–(C). A prisoner must also submit a certified copy of his trust fund account statement for the 6-month period before the filing of his notice of appeal. 28 U.S.C. § 1915(a)(2). Finally, "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3).

Plaintiff's application does not conform with Federal Rule of Appellate Procedure 24(a)(1). Plaintiff's affidavit must "show[] in the detail prescribed by Form 4 of the Appendix of Forms the party's inability to pay or to give security for fees and costs." Fed. R. App. P. 24(a)(1)(A). Plaintiff's affidavit, which is titled "application to proceed in district court without prepaying fees or costs," does not set forth all of

the information required in Form 4 of the Federal Rules of Appellate Procedure Appendix of Forms.¹ Additionally, Federal Rule of Appellate Procedure 24(a)(1)(B) and (C) requires Plaintiff's affidavit to set forth "an entitlement to redress" and "state[] the issues that the party intends to present on appeal." Here, Plaintiff does not include this information in his affidavit, in violation of Rule 24.

For the reasons set forth below, Plaintiff's motion to proceed without prepaying fees or costs on appeal is DENIED WITHOUT PREJUDICE. Plaintiff may resubmit the motion with the correct information.

IT IS SO ORDERED.

Dated: October 23, 2024
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

¹ See United States Courts, *Federal Rules of Appellate Procedure*, <https://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-appellate-procedure> (listing forms).

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or first-class U.S. mail addresses disclosed on the Notice of Electronic Filing on October 23, 2024.

s/William Barkholz
WILLIAM BARKHOLZ
Case Manager